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ATTORNEYS & NOTARIES

Avoiding Regulatory Pitfalls: Navigating Foreign Fintech Licensing in South Africa 🕹️

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Foreign-backed remittance operators are rapidly expanding their digital-first models across Africa, promoting faster and cheaper transfers as they seek to capture strategic corridors and consolidate market positions. **But pay attention … beneath this wave of innovation lies an escalating concern amongst local policymakers and regulators alike.**

📢 We expect that local regulators will be adopting a much firmer stance when dealing with new remittance licenses by carefully considering (i) risks of systemic reliance on foreign-remittance platforms (ii) foreign ownership structures (UBOs) that place remittance controls outside of South Africa and (iii) impacts faced by local remittance operators vs robust foreign fintechs.

🏛 **In legal context**, Finsurv (the relevant regulatory body) has wide discretionary powers to consider **national** and **economic interests** in any new license applications. This means that information submitted by any prospective remittance operator under any heading (i.e. UBOs, governance structures or outsourcing arrangements) may be interpreted by FinSurv on a broader level (economic/ national scope) to either grant or reject new remittance licenses.

🚨 Substance Over Form: What the Regulator is looking for ...

As a result, we recommend that all remittance applicants proactively and substantively deal with the following points in their written remittance representations to the regulators:

- Address foreign Ultimate Beneficial Ownership (UBO) structures;
- Ensure transparency and measured oversight in outsourced staffing and technology arrangements;
- Demonstrate meaningful deployment of local staffing resources and/or skills transfers;
- Empower locally based directors with genuine decision-making authority;
- Demonstrate how operational decisions are executed within South Africa;
- Show practical alignment with local compliance standards and financial inclusion objectives.

🎯MDB Law’s Role

At **#MDBLaw**, we continue to guide foreign and local remittance operations during and after the ADLA licensing process to advise on local policy dictates, legal tenets and remittance compliance issues.